

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ROBERT J. KUEKER,

Petitioner,

v.

JAY MERCHANT¹,

Respondent.

No. 05-CV-0370-DRH

ORDER

HERNDON, District Judge:

On May 24, 2005, Robert Kueker, *pro se* and while an inmate house at the Shawnee Correctional Center filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge the constitutionality of his confinement (Doc. 1).²

On May 19, 2006, Respondent filed a motion to dismiss the petition for writ of habeas corpus without prejudice for failure to exhaust (Doc. 12). Specifically, Respondent argues that this matter must be dismissed without prejudice because Kueker did not appeal or contest his conviction in any Illinois court. As of this date,

¹When this petition was filed, Terry McCann was the warden at Shawnee Correctional Center. However, Jay Merchant is now the warden at Shawnee Correctional Center. Thus, the Court **SUBSTITUTES** Jay Merchant as the proper respondent in this matter. **See Rule 2(a) of the Rules Governing § 2254 cases in the United States District Courts; Fed. R. Civ. P. 25(d)(1); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2005)(citations omitted).**

²The record reflects that Kueker was released from prison on January 12, 2006 (Doc. 12, p. 1).

Kueker has not responded to the motion to dismiss.³ The Court considers this failure to respond as an admission of the merits of the motion.

Accordingly, the Court **GRANTS** Respondent's motion to dismiss (Doc. 12). The Court **DISMISSES without prejudice** Kueker's petition for writ of habeas corpus (Doc. 1). Since the dismissal is without prejudice, the Court will close the case.

IT IS SO ORDERED.

Signed this 22nd day of December, 2006.

/s/ David RHerndon
United States District Judge

³On June 2, 2006, Magistrate Clifford J. Proud allowed Kueker fourteen days to file a reply to any factual or legal matters raised by Respondent (Doc. 13). The record reflects that the copy of the June 2, 2006 Order that was sent to Kueker was returned to the Court as marked "return to sender, no forwarding address" (Doc. 14).